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STATE FOR EAP/CM AND INL;
TREASURY FOR MICHAEL HIRSON

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TAGS: [PGOV](#) [EFIN](#) [SNAR](#) [MG](#)
SUBJECT: DEMOCRACY, TRANSPARENCY AND MONEY LAUNDERING

Classified By: Political Officer Dan Rakove, Reasons 1.4 (b) and (d)

¶1. (C) SUMMARY: Mongolia's Financial Intelligence Unit (FIU) lacks the capacity to combat money laundering effectively. The staff of four must assemble, analyze, and maintain the FIU database of transaction reports as well as ensure compliance among financial institutions. Interagency cooperation remains poor, as the FIU--three years old this month --commands little respect from other justice or law enforcement agencies. Few are the number of predicate offenses in the criminal code to which the crime of money laundering can be applied. Most strikingly, corruption, bribery and tax evasion are not included despite the prevalence of these crimes. To date, the FIU has documented no money laundering, although suspicions are plentiful, particularly in the mining and banking sectors. Russian interests have reportedly lobbied against any increased financial transparency or regulation. The threat of money laundering will likely grow with the financial inflows tied with the massive Oyu Tolgoi mining project and other mineral investments. END SUMMARY.

Vulnerability

¶2. (U) Mongolia is a predominantly cash economy with a large informal sector. There is a significant underground banking sector as well, largely to service the hundreds of thousands of overseas workers sending remittances to Mongolia. The formal commercial banking sector is highly fractured, divided among 16 institutions (including one in conservatorship). Together these factors make Mongolia highly vulnerable to money laundering. The limiting factor has been the country's meager \$5 billion GDP.

¶3. (C) Suspicions abound but there is little concrete evidence of money laundering. What is certain is that the economy is set to expand rapidly with the conclusion of the massive Oyu Tolgoi contract with Western firms to mine copper and gold in the South Gobi and the impending negotiation of several other mineral resources. As the scale of the economy in turn increases, so too will the potential for money laundering. Given the poor legal framework in place, Mongolia is a tempting ground for organized crime.

¶4. (C) Currently, much of Mongolia's gold) subject to a high windfall profits tax) is smuggled into China. As a result, producers devise alternate ways to repatriate the un-taxed profits. Amounts remain unclear, but contacts suggest that four to six metric tons of gold are smuggled annually to evade the windfall profits tax (scheduled to sunset in 2011). This would potentially create some \$140 million to \$210 million for smugglers to repatriate.

Financial Reporting Standards and Practices

15. (C) U.S. Treasury specialist for East Asia Michael Hirson and poloff met with Tumurbat, head of the FIU on September 129. Tumurbat stated that his four staff are unable to collect thoroughly and analyze Cash Transaction Reports (CTR) and Suspicious Transaction Reports (STR) while insuring financial institution compliance with the Anti-Money Laundering (AML) statute. CTRs are filed by financial institutions for each transaction exceeding MNT 2 million (approximately \$1,500). The Asian Development Bank criticized this threshold as being set too high, and fail to capture the large flows of funds. The number of CTRs and STRs seem too few; the FIU received 150,000 CTRs a year. Only 60 STRs were filed with the FIU from February 2008 through September 2009. More troubling, STRs are not required for any type of non-cash transaction.

16. (C) Cooperation by banks seems to be improving. Larger banks were noted as reliably providing intelligence in accord with AML guidelines. Nonetheless, the compliance officer turnover is rapid; employees reportedly move on within three to six months. Inexperienced compliance officers often fail to report transactions qualifying of FIU notification. When banks fail to cooperate out of either ignorance of regulations or alternatively out of negligence, the FIU is empowered to send rectification letters, apply penalties, and ultimately submit the institution to the Central Bank for license revocation.

17. (C) Non-bank financial institutions (NBFI) process an estimated 20 percent of all transactions. However, none had submitted any CTRs or STRs to date. NBFIs include credit institutions, insurance brokers and securities dealers. NGOs do not submit reports to the FIU either.

----- Interagency and International Cooperation -----

18. (C) The Mongolian Customs General Administration (MCGA) and other law enforcement agencies all nominally report to the FIU through the General Intelligence Agency-administered National Coordination Council. Nonetheless, Tumurbat reported receiving little in useful intelligence from these agencies. Statutory requirements of law enforcement are unclear, and officers still lack basic knowledge of AML. Top officials, including Police Colonel Enkhtur, Head of the State Investigation Department, told us October 29 that criminal groups are not engaging in money laundering. Director of the Enforcement and Intelligence Division at the MCGA Dovchinsuren echoed these remarks on October 30 in relation to inflows of non-Mongolian funds. The only suspicion he voiced was in regard to investments in the mining and banking sectors from Russia and China. New mining and mining related contracts will likely multiply in the near future, following the successful negotiations surrounding the massive Oyu Tolgoi mine.

19. (U) Mongolia is a member of the Egmont Group of Financial Intelligence Units as well as the Asia/Pacific Group on Money Laundering (APG). The FIU draws upon lists of individuals provided by the Bank of Mongolia, the U.S. Treasury Office of Foreign Assets Control, and the UN. In addition, the FIU holds MOUs regarding information sharing with counterpart units in Afghanistan, China, Russia and Turkey. They have sent requests to other nations for similar arrangements. The FIU consults with the APG and the Asian Development Bank on money laundering issues, and currently receives funding on these issues only from the World Bank. The Treasury Department's Office of Technical Assistance previously sent a team to provide training to and enhance coordination among law enforcement, judges and the FIU. Tumurbat himself is a Colorado University graduate who participated in the International Visitor Program in April 2008.

----- Interest Groups and Legal Limitations -----

110. (SBU) In the September meeting, Tumurbat expressed optimism that his staff would increase from four to seven by year's end, and that the AML statutory power would be strengthened. However, in a November 4 discussion he told us that actually only one more analyst would be hired. As of now, the Criminal Code contains only five predicate offenses or crimes in the context of which money laundering charges

can be filed: trafficking in drugs, people or illegal arms, as well as counterfeiting currency and terrorist financing. Of these, trafficking in persons and drugs reflect recent, documented threats. Even in the case where such crimes are committed, however, the FIU lacks authority in the Criminal Code to freeze or confiscate assets. The Civil Code is more comprehensive, making predicate offenses of all (these quote marks need to be corrected before transmission.) "less grave, grave and exceptionally grave offences." The only exception to this sweeping statement in the Civil Code is for tax evasion.

¶11. (SBU) Gaps in the criminal and civil codes reflect the interests of the powerful. Tax evasion is widespread, and to include it as a predicate offense in the civil code would threaten many wealthy Mongolians. Political considerations likely resulted in its removal. Mongolia's criminal code is inadequate to tackle the problem. Tumurbat reported that the FIU had submitted to legislators the UN Office on Drugs and Crime/IMF Model Legislation on Money Laundering and Financing of Terrorism with 20 predicate offenses. Twenty offenses entered lawmakers' deliberations; five left. Predicate offenses such as the following vanished in the process: participation in organized crime, corruption and bribery, fraud, insider trading, and market manipulation.

¶12. (SBU) All of these exemptions are particularly problematic given the lack of banking transparency facilitates corruption and bribery. Both of these improprieties occur with frequency, particularly among public officials and politicians. Adding FIU support to the Independent Authority Against Corruption poses a significant threat to the beneficiaries and providers of kickbacks. Both the FIU and IAAC are professionally run, and if allied, could pose a distinct threat to politics as usual. Aside from corruption, tax evasion, fraud, insider trading and market manipulation, are all white collar crimes of the wealthy and influential. Legislators to date have in turn been reluctant to touch these issues. The omission of a predicate offense for organized crime may hinder law enforcement efforts in combating these emergent networks.

Russia Lobbies for Murkiness

¶13. (C) Perhaps more ominously, MFAT Americas Director Odonjil informed us on October 15 that Russia is lobbying in strong opposition to financial transparency measures. Tumurbat reported that of the 16 commercial banks, eight or nine are heavily invested in by state funds and oligarchs of their northern neighbor. Knowledge of the genuine beneficial owner of banks is often unclear. As a result, the FIU will have difficulty in tracing controlling persons behind companies reported as a party to suspect transactions. Foreign depositor identity is similarly opaque due to narrow Know Your Customer laws. Russian state and private investors are unlikely to welcome FIU analysts examining their transactions in connection with an expanded set of predicate offenses.

Reform Efforts

¶14. (SBU) The government was given notice by the Asia/Pacific Group on Money Laundering that its criminal code was deficient in relation to anti-money laundering provisions. In response, the FIU submitted an amended AML law to the Ministry of Justice and Home Affairs for review. Tumurbat reported on November 4 that the Ministry had approved of the draft law. The revision is reportedly in line with international standards. The State Great Khural in turn placed "central bank reform" on its docket for the fall term. Tumurbat is confident AML reform will be considered before the end of the year along with other provisions touching on the Central Bank. Given the significant special interests involved, the enactment of an AML component is uncertain. Tumurbat estimated the likelihood of passage at 60 percent.

Comment

¶15. (C) The question of money laundering is as much a question of financial transparency as it is one of democracy.

It was only one year ago that legislators narrowed the definition of money laundering in defiance of international standards. Tumurbat attributed this regression to a "lack of awareness" among parliamentarians. Equally possible is that a concert of opposition forces undermined the legislation to prolong business as usual through tax evasion or politics as usual through corruption and bribery. Given the interests arrayed in opposition, upcoming deliberations are not then simply a matter of creating an effective AML regime to combat crime. Rather, what is at stake is whether legislators will push for transparency and conformity with international standards, or whether they will prioritize their own re-elections and pocketbooks.

HILL